RAYMOND PANEAK

IBLA 75-262 Decided February 25, 1975

Appeal from decision of Fairbanks Office, Bureau of Land Management, rejecting native allotment application F-16647.

Set aside and remanded.

1. Alaska: Native Allotments -- Applications and Entries: Amendments

   Where an Alaska Native Allotment application pending in the Department on December 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected. However, a correction of a description, where the site was not properly identified on protraction diagrams, may be permitted.

2. Alaska: Generally -- Alaska: Native Allotments -- Oil Shale: Withdrawals

   A decision of the Bureau of Land Management rejecting a native allotment application because the land is within an oil shale withdrawal will be set aside and remanded for further consideration where the Secretary of the Interior has directed the Geological Survey to review its mineral classifications in Alaska and the applicant requests an opportunity to present evidence to dispute the classification.

APPEARANCES: William D. Rives, Esq., of Davis, Wright, Todd, Riese, and Jones of Seattle, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This is an appeal from an April 19, 1974, decision of the Fairbanks District Office, Bureau of Land Management (BLM), reject-

ing the application of Raymond Paneak for an Alaska Native Allotment under the Act of May 17, 1906, 43 U.S.C. §§ 270-1 through 270-3 (1970). The decision recited that the Geological Survey had reported the lands are valuable for oil shale. Lands valuable for oil shale were withdrawn by Executive Order 5327 of April 15, 1930. The decision held that an attempted settlement on withdrawn lands was of no effect.

The appellant contends that the lands applied for are not valuable for oil shale. He states he has retained a geological expert to evaluate the land to determine which, if any, of the land has value for oil shale. He requests permission to submit his proof of absence of oil shale when the geological assessment is completed.

Before considering whether appellant's request should be granted, we must determine if appellant's application was timely filed. This question is raised by the following facts. On July 15, 1971, appellant filed his allotment application with the Bureau of Indian Affairs. The certified application was received by BLM on March 24, 1972, describing the S 1/2 N 1/2 NE 1/4 (40 acres) and the S 1/2 NE 1/4 (80 acres), section 29, T. 12 S., R. 4 W., U.M. During a field examination by a BLM realty specialist with appellant on August 21, 1972, appellant informed the specialist that he misdescribed the land and desires two other separate parcels each of 80 acres. Parcel A consists of a portion of section 28, T. 12 S., R. 4 W., U.M., and Parcel B, consists of portions of section 13 and 14, T. 36 N., R. 21 W., F.M. BLM apparently considered this information as an amendment or clarification of error in description since its decision referred to the application as made for 120 acres in section 28, T. 12 S., R. 4 W., U.M.

[1] Section 18 of the Alaska Native Settlement Claims Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. III, 1973) repealed the Allotment Act. Applications pending on December 18, 1971, however, were protected in accordance with the provision of the statute which provides that -- "Notwithstanding the foregoing provisions of this section, any application for an allotment which is pending before the Department of the Interior on the date of the enactment of this Act may * * * be approved * * *." The converse is also true. An application filed after December 18, 1971, must be rejected. Susie Ondola, 17 IBLA 350 (1974). An amendment filed after that date which embraces new or other lands not described in an application pending on December 18, 1971, must be rejected. George Ondola, 17 IBLA 363 (1974). To the same effect are the guidelines issued by the Assistant Secretary, Lands and Water Resources, on October 18, 1973. That order, in pertinent part, provides as follows:

> All amendments to allotment applications must be closely scrutinized. Amendments which result in the relocation of the allotment will not be accepted unless it appears that the original description arose from the inability to properly identify the

> site on protraction diagrams. Amendments which are designed to claim the commencement of the use and occupancy at an earlier point in time must also be carefully examined and the applicant must establish the reason for the error, his good faith in making the correction, and the applicant must present convincing evidence of the actual use and occupancy at the earlier point in time.

Because the application describing land in section 29 was apparently erroneous and land within section 28 was intended, appellant should be permitted to file a written amendment and show that the original description arose from the inability to identify the site on protraction diagrams properly. Such an amendment would fall within the secretarial guidelines. It would not be permissible, however, to allow an amendment for lands in T. 36 N., R. 21 W., F.M. This would not be an acceptable amendment or correction of error within the secretarial guidelines. Instead, it would constitute a new application for additional land and would violate the statutory prohibition that an application must be pending on or before December 18, 1971, to be saved by the Act repealing the Allotment Act.

[2] Accordingly, as an amendment to appellant's application to correct the description to section 28, may be considered, we come to appellant's request to submit geological evidence that the lands are not valuable for oil shale. In July 1974, the Secretary of the Interior directed the Geological Survey to review its mineral classifications of lands in Alaska. The Survey should be requested to review its classification of lands in section 28 as being valuable for oil shale. If the new classification indicates value for oil shale, appellant should be allowed an opportunity to dispute the classification in accordance with 43 CFR 2093.3-3(d).

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision rejecting native allotment application F-16647 is set aside and remanded for further appropriate processing.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Martin Ritvo
Administrative Judge